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IN THE

Supreme Court of the United States

October Term, 1974.

No. 74-942.

FRANK L. RIZZO, et al.,

Petitioners,

v.

GERALD G. GOODE, et al.,

Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,

Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION.

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OPINIONS BELOW.

The opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 357 F. Supp. 1289 (1973). The Final Judgment of the District Court has not been reported and is set forth in the Appendix of the Petition (App. 20a-37a). The opinion of the United States Court of Appeals for the Third Circuit (App. 1a-19a) is reported at 506 F. 2d 542 (1974).

COUNTER-STATEMENT OF THE QUESTION PRESENTED.

Whether court-ordered revision of police disciplinary procedures for the purpose of reducing what the court found were recurring and otherwise predictable patterns of police violation of constitutional rights was an abuse of federal injunctive power, where the trial record compellingly demonstrated the need for such equitable relief and the relief granted was co-extensive with the need found to exist.

COUNTER-STATEMENT OF THE CASE.

Respondents (hereinafter "plaintiffs" brought these separate but related civil rights actions[1] requesting that plaintiffs' class, consisting of the residents of the City of Philadelphia, be granted appropriate injunctive, declaratory and other equitable relief from the violation of their

1. The two actions were brought and proceeded separately before the same District Court judge who consolidated the cases for final disposition. 357 F. Supp. at 1290. The Court of Appeals also treated the litigation as unitary. 506 F. 2d at 544 (App. 4a-5a). (All references to the opinion of the Court of Appeals will be to both the reported decision and the Appendix.)

constitutional rights by petitioners (hereinafter "defendants"). Plaintiffs produced evidence of a pattern of violations of federally secured rights of citizens by Philadelphia police, particularly as regards arrest for investigation, excessive use of force in response to actual or purported assaults upon policemen, unprovoked use of excessive force and mistreatment of people who question or criticize police activity in particular instances. 357 F. Supp. at 1318. Based on a record both voluminous and complex, 357 F. Supp. at 1291, the District Court, in an opinion by the Honorable John P. Fullam, concluded that violations of rights take place with such frequency that "they cannot be dismissed as rare, isolated instances; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence." 357 F. Supp. at 1319.

The District Court evaluated the existing police procedures for processing and adjudicating citizen complaints and for enforcing police discipline and found they were "totally inadequate" to prevent violations of citizens' rights in that: (1) the procedures were geared to handle infractions to police regulations but were not framed to cover violations of citizens' constitutional rights; (2) complaints were handled on a "chain of command" basis which discouraged fair handling of civilian complaints; (3) there was no adequate opportunity for the complainant to present his case to an objective tribunal; (4) the outcome of the proceedings were not disclosed; and (5) there was a tendency to minimize consequences of proven police misconduct. 357 F. Supp. at 1292-1293; 1318. As one predicate for relief, the District Court found that:

> "It is the *policy* of the department to discourage the filing of such complaints, to avoid or minimize the consequences of proven police misconduct, and to re-

sist disclosure of the final disposition of such complaints." 357 F. Supp. at 1318 (emphasis added).

The District Court emphasized that it had not decided that plaintiffs and their class have a constitutional right to improved departmental procedures for handling civilian complaints against police. Rather, the Court found that

> ". . . under existing circumstances, violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses." 357 F. Supp. at 1321.

The District Court entered an Order requiring defendants

> "to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date." 357 F. Supp. at 1322.

In accordance with this Order, defendants submitted proposals, plaintiffs submitted counter-proposals and various conferences were held with the District Court. The result was the entry over defendants' opposition of a Final Judgment on October 5, 1973 which required defendants to revise procedures for handling citizen complaints against police officers including such matters as: (1) preparing and distributing appropriate forms for the submission of complaints; (2) prompt and adequate investigation; (3) adjudication by an impartial body insulated from command

pressures; and (4) fair opportunity for both complainants and police officers to present their case, followed by notification to the parties of the outcome. (App. 20a-37a). The relief ordered tracked the deficiencies in the present system which the District Court found to exist. As is more fully set forth below, the scope of this relief was clearly consistent with the scope of the problem it was intended to remedy and was clearly cognizant of the presence or absence of effective alternative forms of relief.

On November 1, 1974, the Court of Appeals for the Third Circuit, in an opinion by the Honorable Joseph F. Weis, Jr., affirmed the District Court's grant of injunctive relief. The Court of Appeals concluded that "there was an adequate evidentiary record to support the findings of the district court that violations of constitutional rights by the Philadelphia police occurred in an unacceptably high number of instances and that in the absence of change in procedures such violations are likely to recur." 506 F. 2d at 547 (App. at 10a-11a). The Court of Appeals approved the relief ordered by the District Court, noting:

> "The district court's order granting relief is limited and moderate in tone indicating its faith in the ability and willingness of the police department to investigate and correct the transgressions of its errant members. Despite the assertions of the defendants, the court is not thrusting itself into the day to day operations of the police department—a situation which we agree would be inadvisible and inappropriate in the circumstances of this case. *Cf. Lankford v. Gelston*, 364 F. 2d 197 (4th Cir. 1966). Indeed, the procedures which the district court required be implemented by the police department for the receipt, investigation, and disposition of civilian complaints are fully in accord with the American Bar Association Standards Relating

to the Urban Police Function, which were unanimously approved by the Executive Committee of the International Chiefs of Police in December, 1972." 506 F. 2d at 547-548 (App. 11a-12a).

Defendants' petition for rehearing was denied by the Court of Appeals *en banc* on December 6, 1974. On February 6, 1975, Mr. Justice Brennan denied defendants' application for a stay of the judgment of the Court of Appeals.

REASONS FOR DENYING THE PETITION.

Both the District Court and the Court of Appeals concluded that violations of the constitutional rights of Philadelphia citizens by police occurred in an unacceptably high number of instances and that in the absence of the ordered equitable relief "such violations are likely to continue to occur." 357 F. Supp. at 1321; 506 F. 2d at 547 (App. at 10a-11a). Defendants in their Petition for a Writ of Certiorari do not contest the validity of this conclusion reached by the courts which have fully reviewed the voluminous and complex record in these cases. Defendants in essence concede that there are recurring and otherwise predictable violations of the constitutional rights of Philadelphia citizens and they do not take issue with the finding that the ordered relief will work to lessen future police abuses.

Rather, the limited basis on which defendants seek review in this Court is their contention that the relief ordered constitutes an abuse of injunctive power in that its implementation will thrust the court into the day to day operations of the Police Department and adequate legal remedies exist. The courts below have specifically rejected defendants' contention. 357 F. Supp. at 1319-1321; 506 F. 2d at 546-548 (App. 8a-12a). The relief ordered by the District Court and approved by the Court of Appeals was clearly consistent with both prior decisions of this Court and the problem to be remedied. The issue presented does not warrant review by this Court.

I. The Relief Granted Was in Accord With Prior Decisions of This Court.

Injunctive relief has traditionally been viewed as a proper remedy in cases presenting unconstitutional police activity. *Hague v. C. I. O.*, 307 U. S. 496; ***Lewis v. Kugler***,

446 F. 2d 1343 (3d Cir. 1971); *Lankford v. Gelston,* 364 F. 2d 197 (4th Cir. 1966) (*en banc*). Just last term, this Court specifically held that "a persistent pattern of police misconduct" is an ample predicate for federal injunctive relief. *Allee v. Medrano,* 416 U. S. 802, 815.

Courts have wide discretion to tailor an injunctive decree to a particular factual situation so as to secure, as expeditiously and effectively as possible, the vindication of constitutional rights. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Ed.,* 402 U. S. 1, 15; *Griffin v. County School Board of Prince Edward County,* 377 U. S. 218; *Alexander v. Holmes County Board of Education,* 396 U. S. 19; and the reapportionment cases, e.g., *Baker v. Carr,* 369 U. S. 186; *Reynolds v. Sims,* 377 U. S. 533.[2] In *Allee v. Medrano, supra,* this Court cited with approval the lower court decision in *Wolin v. Port of New York Authority,* 392 F. 2d 83 (2d Cir. 1968) *cert. denied,* 393 U. S. 940 which required defendants to submit for court approval internal administrative directives to cure the enforcement abuses found by the court to exist. 416 U. S. at 816, n. 9.

Indeed the form of relief questioned by defendants has been considered by commentators and members of this Court as appropriate and effective relief for tolerated police misconduct.

2. In the antitrust area, for example, it is firmly established that district courts have the power to grant relief appropriate to the factual situation. In construing Section 4 of the Sherman Act, 15 U. S. C. § 4, which gives the federal courts power to enjoin antitrust violations, the Court has held that the "essential consideration [governing remedial injunctive relief] is that the remedy shall be as effective and fair as possible in preventing continued or future violations . . . in light of the facts of the particular case." *United States v. National Lead Co.,* 332 U. S. 319, 335. Remedial power is broader still in civil rights cases, where the federal courts are under statutory mandate to fashion efficient remedies for violations of vital constitutional rights. 42 U. S. C. § 1988; *see Basista v. Weir,* 340 F. 2d 74 (3d Cir. 1965).

"For tolerated constitutional violations, a prohibitory injunction which only ordered high police officials to refrain from unconstitutional conduct would be useless—the problem lies not in what such officials are doing but in what they are *not* doing. Purely prohibitory injunctions would have to be directed against the subordinate policemen who were acting illegally. But courts would be unable to enforce such injunctions unless they were willing to take over the task of disciplining individual policemen. Such an approach would be highly inefficient since the court's only means of enforcing its orders directly against policemen—a contempt proceeding—would be far too cumbersome and heavy-handed to deal effectively with large numbers of alleged violations.

"If the injunction is to have any utility as a remedy for tolerated police abuse, it must require affirmative action by the officials responsible for police conduct." (Emphasis in original; footnote omitted). Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L. J. 143, 147 (1968), quoted with approval in *Allee v. Medrano, supra,* 416 U. S. at 858-859, n. 20 (Burger, C. J., White and Rehnquist, JJ. dissenting).

Defendants' contention that the relief approved by the Court of Appeals is in conflict with prior decisions of this Court is without merit. Neither *Gilligan v. Morgan,* 413 U. S. 1 nor *O'Shea v. Littleton,* 414 U. S. 488, cited by defendants, supports their position.

Gilligan v. Morgan, 413 U. S. 1, grew out of the campus disorders at Kent State University in May, 1970 at which time the Governor of Ohio called the National Guard to the University campus. Plaintiffs, who were students at the

University, alleged that the National Guard had violated their rights of free speech and assembly, had caused the death of several students and that the Guard's actions were without legal justification. Plaintiffs sought injunctive relief restraining the Governor and National Guard from future violations of plaintiffs' rights. Apart from the question of mootness raised by a change in the training and orders of the Guard, the issue before this Court was whether plaintiffs' claims were justiciable in view of the Constitution's express vesting in Congress of the power to organize, arm and discipline the National Guard (formerly the "Militia"). The issue of the separation of powers led this Court to conclude that the claims raised by plaintiffs did not present a justiciable controversy. In that respect, the present case is very different from *Gilligan* for defendants concede that the issue of lack of a justiciable controversy is not present in this case (Petition, p. 18).

Although *Gilligan* did not reach the issue concerning scope of remedy which defendants seek to raise herein, defendants nevertheless contend that *Gilligan* supports their position. However, the relief sought in *Gilligan* provides a sharp contrast with the nature and basis of the relief granted in the present case. Plaintiffs in *Gilligan* requested continuing judicial surveillance of the training, weaponry and orders of the Ohio National Guard. Such surveillance was to include the setting of standards in these areas by the court. Plaintiffs argued that such broad relief was necessary because of an isolated, albeit tragic, incident of alleged violation of students' rights by the National Guard, although there was no evidence of threatened recurrences of such events.

Unlike *Gilligan*, plaintiffs in the present case presented evidence of numerous incidents of police abuses and official toleration of such abuses in the past. Based on the comprehensive record produced, the District Court properly concluded that such abuses will recur in the future in the absence of the ordered equitable relief. Moreover, by establishing a procedure for handling civilian complaints which is to be administered solely by the Police Department, the relief ordered in the present case, unlike the relief sought in *Gilligan*, does not involve the District Court in the supervision of the day to day operation of the Police Department as both courts below specifically concluded. 357 F. Supp. at 1320-1321; 506 F. 2d 547-548 (App. 11a-12a).

O'Shea v. Littleton, 414 U. S. 488, involved a claim that defendants, a magistrate and a state court judge, engaged in illegal bond-setting, sentencing, and jury-fee practices in criminal cases which deprived plaintiffs of their constitutional rights. Although holding that plaintiffs had failed to satisfy the case or controversy requirement of Article III of the Constitution, this Court went on to discuss the basis for equitable relief sought by plaintiffs. Citing the policy set forth in *Younger v. Harris*, 401 U. S. 37 of restraint by federal courts in the issuance of injunctions against state criminal prosecutions, this Court concluded that the relief sought would violate that policy by disrupting the normal course of such state proceedings. The relief sought would permit members of plaintiffs' class who were being prosecuted in the state courts to interrupt such proceedings in order to adjudicate claims of noncompliance by defendants with the federal court order prohibiting certain actions by defendants. Moreover, this Court noted that plaintiffs had numerous remedies at law to challenge future unlawful conduct by defendants such as the right to a substitution of a judge or change or venue, and review on direct appeal or post conviction collateral review.

In the present case, as noted by the Court of Appeals, the relief ordered does not interfere with or involve on-

going state criminal proceedings as in *O'Shea*. 506 F. 2d at 546 (App. 8a). The fact of such ongoing proceedings provided plaintiffs in *O'Shea* with a forum and remedies adequate to redress the alleged violations of their rights. In the present case, on the contrary, the District Court carefully examined existing remedies and specifically found that such remedies were inadequate to protect plaintiffs and the class they represent. 357 F. Supp. at 1319-1320. *See also, Mapp v. Ohio,* 367 U. S. 643, 651-653; *Lewis v. Kugler, supra,* 446 F. 2d at 1350; *Lankford v. Gelston, supra,* 364 F. 2d at 202.

II. The Relief Granted Was Consistent With the Problem to Be Remedied, Was Consistent With the Presence or Absence of Available and Effective Alternatives, and Was Consistent With the Need to Protect the Public Interest Involved.

Based on examination of the voluminous record presented in these cases, the District Court found that there were "recurring and otherwise predictable violations of the constitutional rights of [Philadelphia] citizens" by members of the Philadelphia Police Department. 357 F. Supp. at 1320. The court also found there was official acquiescence in such violations, as reflected in the clear *policy* of the named defendants to do "little or nothing" with regard to their remedy or prevention. 357 F. Supp. at 1319.

The relief ordered by the District Court was clearly consistent with and reflective of the factual findings it had made. The relief approved was predicated upon defendants' presumed ability to control their own internal operating procedures so as to prevent unlawful police acts. This relief was appropriately described by the Court of Appeals as "limited and moderate in tone." 506 F. 2d at 547 (App.

11a). Significantly, at no time, either prior or subsequent to the Final Judgment in this case, did the defendants argue that the suggested or approved administrative directive was in any way cumbersome or difficult of implementation.[3]

The form of relief was the approval of, and order to implement, a system of internal investigation and review of complaints for the protection of Philadelphia citizens. In granting this particular form of relief the trial court clearly did the following: first, as we indicate below, it considered all feasible alternatives to remedy the problem at hand; second, given these alternatives, it selected the option which, based on the record, appeared to offer the greatest promise of effective relief; third, it made provision for evaluation in actual practice of the options selected; and finally, it allowed for possible modification, or the selection of other alternatives, should evaluation demonstrate that the remedy chosen is either too cumbersome on defendants or, on the other hand, ineffective as a remedy for plaintiffs. *Cf. Green v. County School Board of New Kent County,* 391 U. S. 430, 439 (school desegregation decree).

The trial court painstakingly evaluated possible alternatives to the course actually adopted. The most drastic of these—imposition of external civilian control (by appointment of a master or other means as requested by plaintiffs in *COPPAR*)—was rejected, not because the

3. Defendants, who participated in the drafting of the procedures which are embodied in the Final Judgment and who proposed that the relief be framed in the form of a Police Department directive, contend for the first time in their Petition that the relief granted would "severely interfere with the Police Department's primary purpose to prevent and detect crime." (Petition, p. 15). A review of the Final Judgment in no way supports defendants' claim nor is there any support for it in the extensive record of this case. Moreover, the order by its terms is subject to modification should evaluation demonstrate that the remedy chosen is either cumbersome or ineffective.

facts might not ultimately warrant it, but because in the court's view the defendants themselves ought, in the first instance, retain the responsibility for setting their own house in order. 357 F. Supp. at 1320-1321. Likewise, the court declined to issue a broad injunctive prohibition against all police infringements of federally secured rights, a course which might have subjected police officials to contempt adjudications for each such violation and would have given the court a continual monitoring role insofar as contempt proceedings were involved. Likewise, the trial court deferred to the role which the Police Commissioner currently plays in disciplinary matters. 357 F. Supp. at 1321. The opinion was replete with references to the difficult and sensitive nature of police work and characterized the relief granted as a merely "necessary first step" in remedying problem at hand. 357 F. Supp. at 1321. And finally, the manner in which the trial court weighed these respective remedial options is a clear indication that the relief granted, in light of the voluminous record as to official indifference, appeared to the court to offer the greatest promise of effective relief.

We note, as did the court below, that the relief actually granted follows the recommendations of the National Advisory Commission of Criminal Justice Standards and Goals [4] in the area of model standards for police internal control and discipline. Problems of police abuse have been the subject of a great deal of learned commentary (*see* 357

4. The National Advisory Commission on Criminal Justice Standards and Goals was appointed on October 20, 1971, by the Administrator of the Law Enforcement Assistance Administration (LEAA). Membership in the Commission was drawn from the three branches of state and local government, from industry, and from citizens' groups. Commissioners were chosen, in part, for their working experience in the criminal justice area, and included chiefs of police, judges, corrections officials and prosecutors. The Commission's *Report on Police* (U. S. Government Printing Office: #1973, 0-493-564) was published in January, 1973, and included, *inter alia*, the standards to which reference is made.

F. Supp. at 1318 and sources there cited), and in addition to the National Advisory Commission *Report on Police,* have been the subject of concern of two Presidential Commissions. *Report of the National Advisory Commission on Civil Disorders,* (GPO #1968-0-291-729, March 1, 1968); *Report of the President's Commission on Law Enforcement and Administration of Justice,* "The Challenge of Crime in a Free Society," (GPO #1967-0-239-122, 1967).

Crime practiced by law enforcers is a particularly pernicious evil. This evil is of singular importance in that its effect is to reduce public confidence in the mechanisms of justice and to promote reliance upon lawlessness as the only effective remedy. In the compelling, and for that reason often cited, words of Mr. Justice Brandeis:

> "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously . . . . Crime is contagious. If the Government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States,* 277 U. S. 438, 485 (dissenting opinion).

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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